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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,953	09/29/2003	Gregory D. Dietz	1792.001US1	5273

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Lemaire Patent Law Firm, PLLC
P. O. Box 11358
St. Paul, MN 55111

EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/674,953

Applicant(s)

DIETZ, GREGORY D.

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2, 18, 23 and 27 is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 10-17, 19-22 and 26 is/are rejected.
- 7) ☒ Claim(s) 24 and 25 is/are objected to.
- 8) ☒ Claim(s) 1-27 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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1. The finality of the previous Office action (mailed on 9/12/2006) is withdrawn and replaced with the following non-final Office action.
2. Applicant's election with traverse of species D (figs. 12, 14, 15, and 16) in the reply filed on 5/6/2005 is acknowledged.

Claims 6-9 are withdrawn from consideration as being directed to non-elected species. Claims 1-5 and 10-27 read on the elected species and an action on these claims follows.

3. The indicated allowability of claims 1, 3-5, and 10-17 is withdrawn in view of the newly discovered reference(s) to Pohl (553) and Castilla (583). Rejections based on the newly cited reference(s) are listed below.
4. Claims 19-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has invoked 35 USC 112 (sixth paragraph) with regard to the claim limitations directed to "means on the gun sight for sighting a target ... to compensate for a distance to the target and for motion of the target" without identifying the location of this means plus function language in the written specification (see MPEP 2181).

MPEP 2181:

II. WRITTEN DESCRIPTION NECESSARY TO SUPPORT A CLAIM

LIMITATION WHICH INVOKES 35 U.S.C. 112, SIXTH PARAGRAPH

35 U.S.C. 112, sixth paragraph states that a claim limitation expressed in means-plus-function language "shall be construed to cover the corresponding structure...described in the specification and equivalents thereof." "If one employs means plus function language in

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a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112.” In re Donaldson Co., 16 F.3d 1189, 1195, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (in banc).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4-5, 19-22, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Pohl (553).

Pohl (553) discloses a gun sight comprising:

- | | |
|--|---|
| a) a first larger sight indicator; | 14 |
| b) a second smaller sight indicator; | 15 or 17 or opening
between 15 and 17 |
| c) indicators with substantially enclosed outlines; | see 14, 15, 17 |
| d) a non-telescopic sight; | see fig. 1 |
| e) compensation for motion of target; | page 1, lines 14-19 |
| f) compensation for a distance to the target; | page 1, lines 105-111;
page 2, lines 31-40 |
| g) a gun barrel; and | 5, 6 |
| h) means for removably attaching the gun sight to a firearm. | page 1, lines 48-70 |

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7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pohl (553) in view of King (469).

Pohl (553) applies as recited above. However, undisclosed are third, fourth, fifth, sixth, and seventh indicators of reduced size associated with increasing range distances. King (469) teaches third, fourth, fifth, sixth, and seventh indicators of reduced size associated with increasing range distances (5, 6, 7, 8, 9, 10; see page 1, col. 2, lines 29-55 and page 2, col. 1, lines 1-5). Note that the reduction in sized of the indicators is present as the indicators are located further from the barrel. Applicant is selecting a particular sized aperture for the aperture of Pohl in an analogous art setting for the advantages stated in King (page 1, col. 2, lines 15-23 and figs. 2 and 8). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of King to the Pohl gun sight and have a gun sight with variable size apertures associated with variable ranges to the target.

9. Claims 10, 12, 14, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pohl (553) in view of Castilla (583).

Pohl (553) applies as previously recited. However, undisclosed is a gun sight composed of a transparent substrate. Castilla (583) teaches a gun sight composed of a transparent substrate (col. 2, lines 40-42). Applicant is substituting one material type of gun sight material for another in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at

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the time of the invention to apply the teachings of Castilla to the Pohl gun sight and associated method and have a gun sight that is composed of a particular material type.

10. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pohl (553) in view of Castilla (583) as applied to claims 10, 12, 14, and 16-17 above, and further in view of King (469).

Pohl (553) and Castilla (583) as recited above. However, undisclosed is a third indicator of reduced size associated with increasing range distances located between the first and second sight indicators. King (469) teaches a third sight indicator of reduced size located between the first and second sight indicators associated with increasing range distances (5, 6, 7, 8, 9, 10; see page 1, col. 2, lines 29-55 and page 2, col. 1, lines 1-5). Note that the reduction in sized of the indicators is present as the indicators are located further from the barrel. Applicant is selecting a particular sized aperture for the aperture of Pohl in an analogous art setting for the advantages stated in King (page 1, col. 2, lines 15-23 and figs. 2 and 8). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of King to the Pohl and Castilla gun sight and have a gun sight with variable size apertures associated with variable ranges to the target.

11. Claims 2, 18, 23, and 27 are allowed.

12. Claims 24-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

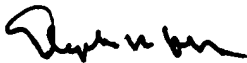
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877

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and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
February 2, 2007